S. HRG. 100-678

ELIZABETH ANNE MOLER NOMINATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON THE

NOMINATION OF ELIZABETH ANNE MOLER TO BE A COMMISSIONER OF THE FEDERAL ENERGY REGULATORY COMMISSION

JULY 14, 1988

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

87-446 WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S311-68

COMMITTEE ON ENERGY AND NATURAL RESOURCES

J. BENNETT JOHNSTON, Louisiana, *Chairman*

DALE BUMPERS, Arkansas
WENDELL H. FORD, Kentucky
HOWARD M. METZENBAUM, Ohio
JOHN MELCHER, Montana
BILL BRADLEY, New Jersey
JEFF BINGAMAN, New Mexico
TIMOTHY E. WIRTH, Colorado
WYCHE FOWLER, JR., Georgia
KENT CONRAD, North Dakota

JAMES A. McCLURE, Idaho
MARK O. HATFIELD, Oregon
LOWELL P. WEICKER, JR., Connecticut
PETE V. DOMENICI, New Mexico
MALCOLM WALLOP, Wyoming
FRANK H. MURKOWSKI, Alaska
DON NICKLES, Oklahoma
CHIC HECHT, Nevada
DANIEL J. EVANS, Washington

DARYL H. OWEN, *Staff Director*
D. MICHAEL HARVEY, *Chief Counsel*
FRANK M. CUSHING, *Staff Director for the Minority*
GARY G. ELLSWORTH, *Chief Counsel for the Minority*

CONTENTS

STATEMENTS

	Page
Bingaman, Hon. Jeff, U.S. Senator from New Mexico	9
Domenici, Hon. Pete V., U.S. Senator from New Mexico	7
Ford, Hon. Wendell H., U.S. Senator from Kentucky	7
Johnston, Hon. J. Bennett, U.S. Senator from Louisiana	1
McClure, Hon. James A., U.S. Senator from Idaho	4
Metzenbaum, Hon. Howard M., U.S. Senator from Ohio	11
Moler, Elizabeth Anne, nominee to be a Commissioner of the Federal Energy Regulatory Commission	10

APPENDIXES

APPENDIX I

Informational statement of Elizabeth Anne Moler 23

APPENDIX II

Responses to additional questions submitted by Elizabeth Anne Moler 38

ELIZABETH ANNE MOLER NOMINATION

THURSDAY, JULY 14, 1988

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 11:08 a.m. in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The hearing will come to order.

This morning we have a highly controversial hearing on the appointment of Elizabeth Moler to the Federal Energy Regulatory Commission. [Laughter.] It is really a labor of love this morning because we think so much of Betsy. She is part of our official family here.

She has exercised such high intellect and sound judgment and industrious work and faithful service in so many ways that it really is a great pleasure for us to have Betsy before the Committee, even though her confirmation or recommendation from this Committee is very much in doubt. [Laughter.]

There are a number of issues pending before the Federal Energy Regulatory Commission in which this Committee has a vital interest. FERC has yet to issue a final rule in response to the D.C. Circuit's decision in the case of *Associated Gas Distributors* v. *FERC*, reviewing the Commission's open access rules for interstate natural gas pipelines.

The industry is operating on the basis of interim rules. FERC has approved only one gas inventory charge for a major interstate pipeline, that being Transwestern. Many other gas inventory proposals are working their way through the Commission, and I have urged the Commission to act quickly on pending proposals.

FERC has issued three interrelated notices of proposed rulemaking with respect to electric utilities. The proposals are very far-reaching and controversial. Much work needs to be done in order to make those proposals a workable blueprint for power supplies for the electric utility industry.

We expect Betsy to help craft rules that work and achieve the appropriate balance among all the competing interests involved.

At this point I will put into the record a copy of a letter to the President dated March 23, 1988, endorsing Betsy and signed by all 19 members of this Committee.

[The letter referred to follows:]

J. BENNETT JOHNSTON, LOUISIANA, CHAIRMAN
DALE BUMPERS, ARKANSAS
WENDELL H. FORD, KENTUCKY
HOWARD M. METZENBAUM, OHIO
JOHN MELCHER, MONTANA
BILL BRADLEY, NEW JERSEY
JEFF BINGAMAN, NEW MEXICO
TIMOTHY E. WIRTH, COLORADO
WYCHE FOWLER, JR., GEORGIA
KENT CONRAD, NORTH DAKOTA
JAMES A. McCLURE, IDAHO
MARK O. HATFIELD, OREGON
LOWELL P. WEICKER, JR., CONNECTICUT
PETE V. DOMENICI, NEW MEXICO
MALCOLM WALLOP, WYOMING
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLAHOMA
CHIC HECHT, NEVADA
DAVID J. EVANS, WASHINGTON
BARYL H. OWEN, STAFF DIRECTOR
D. MICHAEL HARVEY, CHIEF COUNSEL
FRANK M. CLEMMONS, STAFF DIRECTOR FOR THE MINORITY
GARY G. ELLSWORTH, CHIEF COUNSEL FOR THE MINORITY

United States Senate
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

March 23, 1988

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

We understand that you have under consideration Elizabeth Anne "Betsy" Moler as a nominee to the Federal Energy Regulatory Commission. We wish to heartily endorse Betsy for this position.

Betsy has worked for this Committee for over 12 years. Currently she is Senior Counsel to the Committee with primary responsibility for matters within the purview of the Commission, most particularly natural gas, electric utility and oil pipeline regulatory matters. Throughout her service here we have come to know Betsy as a person of broad intellect and sound judgment. She is widely respected by Senators on both sides of the aisle for her knowledge of issues before the Commission and for her nonpartisan, professional approach to dealing with issues before the Committee.

In short, we believe Betsy would be an excellent nominee and we heartily urge your favorable consideration of her.

With kindest regards, we are

Sincerely,

James A. McClure

Dale Bumpers

Wendell Ford

The CHAIRMAN. I will also put into the record her information disclosure report.[1]

Now, before I swear in Betsy let me ask Senator McClure if he has any comments.

STATEMENT OF HON. JAMES A. McCLURE, U.S. SENATOR FROM IDAHO

Senator MCCLURE. First, Mr. Chairman, I have a prepared statement that I would like to submit for the record if I may have it made a part of the record. It details a great deal of the background and professionalism that has brought Betsy to this point.

And I do welcome the opportunity to see you in the position you are, where we get to beat up on you today. And I suppose you will get a fair share of that from this panel up here.

I know that you were selected for your expertise, and I mean this very sincerely. Your nomination is not because of your political activities or your loyal support for the Reagan Administration. [Laughter.]

And my support for you is for exactly the same reasons, and that is your professional competence which you have demonstrated before this Committee consistently over the years.

And it is a pleasure for me to be able to both say that and see you here in this capacity, and I look forward to working with you.

I will also have a few questions later.

[The prepared statement of Senator McClure follows:]

[1] See Appendix I.

Statement of Senator McClure

Nomination Hearing of Betsy Moler
to be a Member of the Federal Energy Regulatory Commission

July 14, 1988, 11:00 a.m.

Good morning. It is a great pleasure to welcome Betsy to the committee today in a much different capacity than we normally see her. For the past thirteen years the members of this Committee, Republican as well as Democratic, have depended on Betsy for her counsel and advice on the myriad of energy issues with which we deal. Now she sits before us as the President's nominee to become a member of the Federal Energy Regulatory Commission. Mr. Chairman, I would like to express my appreciation to Betsy for her contribution to me and the Committee over the years, and indicate my enthusiastic support for her nomination.

Mr. Chairman, as you know, Betsy has played a key role in the formulation of our country's energy laws relating to natural gas policy. She has gained national recognition for her expertise in energy policy, natural gas policy, and specifically the National Gas Policy Act of 1978 and our attempt in 1983 to amend that Act.

After graduating from the American University School of International Service, Betsy joined the staff of a member of this Committee, Senator Gravel. During this time she also attended Johns Hopkins University and studied political science. In 1973 she became Chief Legislative Assistant to Senator Haskell, also a member of this Committee, and at the same time attended the George Washington University National Law Center. Betsy came to work for the Energy and Natural Resources Committee in February of 1976 while she simultaneously earned her Juris Doctor degree in May of 1977.

During her school years, Betsy received numerous awards and honors, including a graduate fellowship at Johns Hopkins University. She is a member of the American Bar Association, the D.C. Bar Association, and serves as a member of the Advisory Council of the International Energy Program of the Johns Hopkins Foreign Policy Institute. From 1985 to 1987, she was a member of the Board of Directors of the Institute for the Study of Regulation. In addition, Betsy has published several articles relating to natural gas deregulation and other energy issues.

Betsy has spent her entire professional career working with issues relating to the Federal Energy Regulatory Commission, most particularly natural gas and electric utility and oil pipeline matters. She has consistently demonstrated her expertise, shown sound judgment, and provided valuable counsel to the Members of the Committee on both sides of the isle. Mr. Chairman, I am confident that Betsy will continue her professional approach in dealing with the issues before the FERC. She is an excellent nominee for this position and I heartily endorse her and recommend to all members of the Committee her favorable consideration.

The CHAIRMAN. Thank you.
Senator Ford.

STATEMENT OF HON. WENDELL H. FORD, U.S. SENATOR FROM KENTUCKY

Senator FORD. Mr. Chairman, I will not have any questions for the nominee. I think the experience of members of this Committee in working with Betsy over the years—and maybe I ought to call you Elizabeth when we get more formal. It is a little hard to do that, though.

I want to say that she truly has been honest and I expect her to continue to do that. She is one who displays integrity in the finest tradition, and in my opinion is a professional in the truest sense.

I think what we are seeing here today, Mr. Chairman, is what most Committees ought to see and not many have, is that we have been blessed with the choice of individuals who work with us on this Committee that have displayed a true professional operation of a Committee.

They have operated in a sphere that gives us the kind of competence we need. And so I am pleased to see Betsy take—being offered this position. I do not believe there will be a dissenting vote in the Committee or on the Senate floor, because I do not think most people who know her or those of us who can explain what her attributes are will allow any dissenting vote.

Mr. Chairman, I am pleased to support Elizabeth Anne today and to tell her that I look forward to working with her in the same manner that we have worked in the last years. I am getting close to being the oldest member of this Committee—I say "getting close"—in seniority. The rest of you in age far exceed me.

But it has been a time of joy and disappointment. But never have I been disappointed in Betsy, and I intend to support her with enthusiasm, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Ford.
Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Mr. Chairman, let me just echo the sentiments that have been expressed by the three Senators that have preceded me, including you, Mr. Chairman, and the ranking member.

I have had the privilege of serving on this Committee for a long time, not quite as long as Senator McClure. I think he remembers why that is. I chose this Committee when I arrived, but he had the old-fashioned type seniority. We arrived at the same time.

Today he would, if we came, he would not have seniority because his name starts with "M"and mine with "D", and I would be ahead of him alphabetically.

Senator FORD. I thought it was when your state came into the Union.

Senator DOMENICI. He got a little break because his Senator let him start early and that is why he got ahead of me. Plus he was a U.S. House Member and I was only a mayor.

Senator FORD. See, Betsy, they are not concerned about you. They are arguing about their seniority.

Senator DOMENICI. Now I am getting down to the fact that I have not known her as long as a couple of members. But I want to say that those many years that I have served here, including that period of time, which seemed like half my service in the Senate, when we worked on the Natural Gas Policy Act, I learned to respect your judgment.

And I think what I found best, what I liked best, was that you respected our judgments and you tried to serve us. And I saw that throughout all those difficult times when we were writing the most complicated of Acts and laws. And I thank you for that.

And I believe you have acquired plenty of expertise to serve the country now in this very important position. And it is with real sincerity that I wish you the very best, and it is with real certainty that I say you will do a splendid job.

And so I am here to vote to confirm you, and hope that we will do that quickly.

Thank you, Mr. Chairman.

The CHAIRMAN. THANK YOU, SENATOR DOMENICI.

Before I administer the oath, I wish you would introduce your husband to this Committee.

Ms. MOLER. I would be pleased to introduce my husband to the Committee if he needed an introduction. Most of you know him as Mr. Public Lands. I know him as a wonderful husband and to the point a great father.

The CHAIRMAN. Welcome, Tom.

Senator FORD. One of the few mistakes she has ever made.

[Laughter.]

The CHAIRMAN. I have a statement for the record from Senator Bingaman.

[The prepared statement of Senator Bingaman follows:]

Statement by Senator Jeff Bingaman
Nomination of Elizabeth Anne Moler to the FERC
July 14, 1988

Mr. Chairman, I am pleased to join my colleagues on the Committee in voicing strong support for the nomination of Betsy Moler to the Federal Energy Regulatory Commission. Betsy's impressive credentials and her effective service on the Energy and Natural Resources Committee make her well-qualified to serve as a FERC Commissioner. Her knowledge and expertise in the matters that come before FERC will undoubtedly increase the effectiveness and quality of the decisions make by the Commission.

Since I joined the Committee, Betsy has generously offered her time and counsel to me and my staff, as well as my constituents from New Mexico. Her eleven years of service to this committee were marked by thoughtful, intelligent contributions to its work. My only regret with her nomination is that we will lose her valued advice and counsel.

However, we are fortunate to have someone of her caliber continuing in public service. Betsy, I wish you well and hope I may continue to seek your assistance in the future.

The CHAIRMAN. The rules of the Committee which apply to all nominees require that they be sworn in connection with their testimony. If you will please rise and raise your right hand.

[Whereupon, Elizabeth Anne Moler was duly sworn by the Chairman.]

Ms. MOLER. I do.

The CHAIRMAN. Before you begin your statement, I will ask you three questions addressed to each nominee before this Committee. Will you be available to appear before this Committee and other Congressional Committees to represent Commission positions and respond to issues of concern to the Congress?

Ms. MOLER. I will.

The CHAIRMAN. Are you aware of any personal holdings, investments, or interests which could constitute a conflict of interest or create the appearance of such a conflict should you be confirmed and assume the office to which you have been nominated by the President?

Ms. MOLER. My investments, personal holdings, and other interests have been reviewed both by myself and the appropriate ethics officers and counselors within the Federal Government. I have taken appropriate action to avoid any conflict of interest.

There are no conflicts of interest or appearance thereof to my knowledge.

The CHAIRMAN. Are you involved or do you have any assets held in blind trusts?

Ms. MOLER. No.

The CHAIRMAN. Betsy, would you please proceed.

STATEMENT OF ELIZABETH ANNE MOLER, NOMINEE TO BE A COMMISSIONER OF THE FEDERAL ENERGY REGULATORY COMMISSION

Ms. MOLER. Mr. Chairman and members of the Committee, I am pleased to be here as President Reagan's nominee to be a member of the Federal Energy Regulatory Commission.

First, let me thank you publicly, Mr. Chairman, for your support of my nomination. There is no doubt in my mind that I would not be here today without your intervention and efforts on my behalf.

I also want to thank you, Senator McClure and the other members of this Committee, who wrote the President and urged him to nominate me. I understand that the bipartisan support of the members of this Committee played a critical role in the President's decision to nominate me. If I am confirmed by the Senate, I hope I will continue to have your support in my years on the Commission.

I have also been fortunate enough to have the support of the majority leader for my nomination, and I want to thank him publicly as well.

I have been a member of this Committee's staff since 1976. Before that I worked for two members of this Committee. All told, I have worked on Capitol Hill for 21 years. I have learned two critical lessons during that time that I hope will enable me to be a good Commissioner.

The first lesson is that there is no substitute for honesty, integrity, and professionalism in public service. Throughout my profes-

sional career, I have tried to conduct myself with those needs in mind, and I pledge to you that I will continue to do so.

The second lesson is how to approach and resolve differences in controversial issue areas. In my view, the only productive way to proceed in these instances is to try to work out differences of opinion and to find common ground. That is the way this Committee has worked and indeed that is the way the Senate works.

If confirmed, I will apply those lessons at the Commission. I cannot imagine being able to function effectively without following those lessons, particularly in a collegial body such as the Commission.

Section 204 of the Department of Energy Organization Act requires that: "The chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by federal energy policy."

I believe I meet those requirements.

I cannot imagine a better training ground for membership on the Commission than being on this Committee staff. Over the years I have become reasonably familiar with all of the statutes the Commission administers, although I obviously have more expertise in the natural gas area than I do in other areas of the Commission's jurisdiction.

I am looking forward to learning how the statutes are administered and implemented on a day to day basis. I pledge to you that I will take all of the interests affected by federal energy policy into account, as the statute requires, before I make any Commission decision as a Commissioner.

Since many of you have known me for years, it does not seem necessary to make a lengthy statement. I won't. I will of course be pleased to answer any questions any members of the Committee may have.

Thank you.

The CHAIRMAN. Thank you very much, Betsy. I know you will do an outstanding job on the Commission.

Senator METZENBAUM. Mr. Chairman, before you get into your line of questioning, since I came over for a very specific purpose, would you mind if I made an opening statement?

The CHAIRMAN. Please do.

STATEMENT OF HON. HOWARD M. METZENBAUM, U.S. SENATOR FROM OHIO

Senator METZENBAUM. Thank you very much and I appreciate your courtesy.

I am pleased that Betsy Moler has been nominated to be a member of the Federal Energy Regulatory Commission. I have worked with her for a long number of years and have always had a good working relationship with her.

There is no question she is an able professional staff member and has been for many years on this Committee. Her intellect and capability are undisputed. She is held in the highest regard by Senators and staff alike, and on a bipartisan basis.

She is able, qualified, and I am for her appointment. In fact, every member of this Committee, as we all know, signed a letter to the White House urging that she be nominated for this position at FERC.

Her expertise, particularly in the area of natural gas, and her involvement in developing the Natural Gas Policy Act of 1978, is well renowned.

But having said that, Mr. Chairman, and having nothing at all to do with Betsy, I am concerned that a hearing has not been scheduled for another FERC nominee. Dr. Charles Stalon, currently a member of FERC, was nominated to fill the remainder of Commissioner Naeve's term. So when she is confirmed, Dr. Stalon would be out.

Commissioner Stalon has been a very valuable member of the Commission since his appointment in 1984. He is the only economist on the Commission. He is highly regarded by all sectors of the energy community, including producers, carriers, state regulators, and consumers. He is largely responsible for the development of Order 436, which creates a more competitive natural gas environment.

Clearly, he has served the Commission well as a voice of moderation and balance among the competing interests in the energy regulatory areas.

I believe that both Ms. Moler and Dr. Stalon can make important contributions at FERC. Therefore, it is my hope that their nominations will move forward simultaneously. The lack of a sufficient voting quorum at FERC would have serious adverse effects throughout the industry. FERC would be unable to make even the most routine decisions.

And I would hope, Mr. Chairman, that instead of our moving forward only with the Moler nomination, that we will also at the same time move forward with the Stalon nomination.

And I would like to point out that 19 Senators from both sides of the aisle have signed a letter in support of Dr. Stalon's nomination. That will be delivered to the Chairman today, and it is my understanding that there will be additional signatures as well.

In addition, I just learned that the Great Lakes Conference of Public Utilities Commissioners passed a unanimous resolution at its meeting yesterday in West Virginia endorsing Stalon's nomination.

So in the spirit of cooperativeness and because I would like to see this nomination, as well as Mr. Stalon's nomination, move—that would be for a shorter term, as you well know, his that is—that we might move both of these forward at the same time.

I think it would expedite the process.

The CHAIRMAN. Thank you very much, Senator Metzenbaum. I will look forward to getting that letter.

[The letter follows:]

United States Senate

WASHINGTON, DC 20510

July 13, 1988

The Honorable J. Bennett Johnston
Chairman, Committee on Energy and
Natural Resources
364 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Mr. Chairman,

We write to urge you to act on the nomination of Dr. Charles Stalon to the Federal Energy Regulatory Commission (FERC) before a vote is taken on any other nominees. Because the White House has chosen to renominate Dr. Stalon just for the remainder of C. Michael Naeve's term, we believe it is imperative that Dr. Stalon's appointment be confirmed expeditiously.

Dr. Stalon is the only economist on the Commission. He brings a wealth of regulatory experience and excellent academic credentials to the job. He has served the Commission well as a voice of clear-headed objectivity and moderation. He is highly regarded by state regulators, producers, carriers, and consumers alike.

FERC decisions have a major impact on charting our energy policy. Dr. Stalon's well-balanced perspective provides him with a sensitivity to the broad array of interests affected by FERC actions. He applies his expertise in an evenhanded manner on all issues that come before the Commission. Furthermore, his reappointment would insure that there is continuity in addressing the Commission's full and complex agenda.

The Commission is in flux. It is extremely important that the seat left by Mr. Naeve be filled shortly to allow the Comission to maintain its busy schedule. Other appointment confirmations should also proceed, but not at the expense of the very worthy Dr. Stalon. We respectfully request that nomination hearings be scheduled in a timely manner to allow Dr. Stalon to retain a seat on FERC.

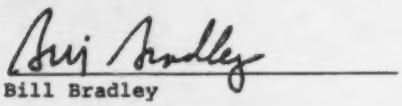
Sincerely,

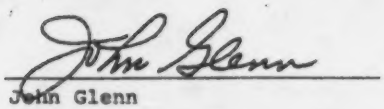
Christopher Bond

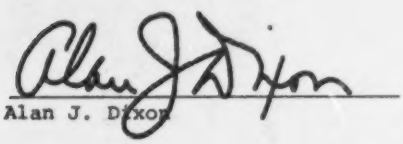
John Heinz

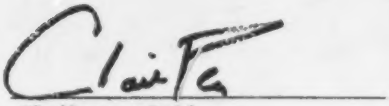
87-446 0 - 88 - 2

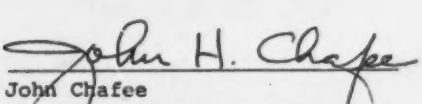
page two
Chairman Johnston
July 13, 1988

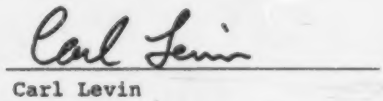

Bill Bradley

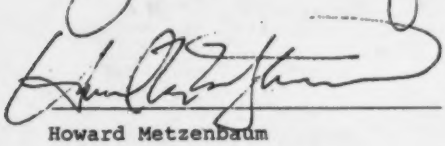

John Glenn

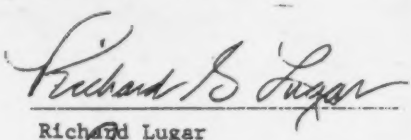

Alan J. Dixon

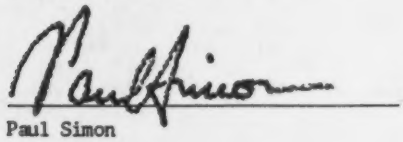

Claiborne Pell

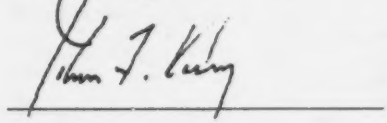

John Chafee

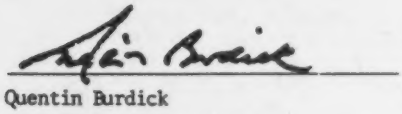

Carl Levin

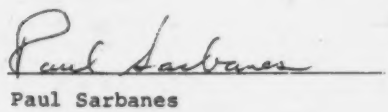

Howard Metzenbaum


Richard Lugar

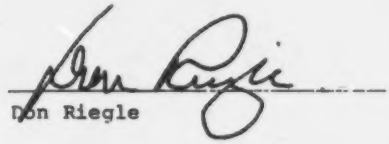

Paul Simon


John Kerry


Quentin Burdick


Paul Sarbanes

John C. Danforth


Don Riegle

Frank Lautenberg

Daniel Patrick Moynihan

Tom Harkin

Charles Grassley

Edward Kennedy

cc: Energy and Natural Resources Committee staff

The CHAIRMAN. Betsy, as you know—and this question is not so much to you. It is really more of a statement, which I hope will get over to FERC.

We have had a hearing on the new regulations on electricity rulemakings, and while I do not have any strong opinions about IPP's and about that whole area, the one thing I was convinced of at that hearing and that I have become more convinced of as I have heard descriptions of the rulemaking—I will be frank to say I have not personally had time to read that rulemaking—it seems to me that it is premature to adopt that rulemaking at this time, for a number of reasons.

First, because there are too many holes in the rulemaking, too many things that haven't been thought out. It is in effect incomplete.

Secondly, because you and the other Commissioners ought to have a chance to take a look at that and be involved in that rulemaking and to have the time to do so.

And as I say, I don't have any personal strong feelings about the way it ought to come out. If you left it to me to design the program right now, I could not give you the outlines of exactly what it ought to be, except to say that we ought to design these rules in the public interest to get the most electricity at the lowest cost, with the most competition, for the healthiest industry, with the most reliability, and all of those generalities, which do not tell you anything about how it ought to come out.

But I would hope that the Commission will slow down their process and not rush to judgment. We would regard that, I think, on the Committee on a bipartisan basis, at least speaking for myself, I would regard that as a rush to judgment if they tried too quickly to enact those rules.

And again, not because I think they favor one side or the other too much, but because I think it's just premature. They have not been thought out enough. And I hope that message gets over there.

Other than that, I do not have any questions for you. If I do, I will call you up this afternoon and ask you.

Senator McClure.

Senator MCCLURE. Thank you very much, Mr. Chairman.

I had indicated that I would ask questions. Perhaps it would be better to say that I will make a comment and see whether the nominee has any comments.

I think you know the concern that I and others have expressed over the relationship between the Federal Government and the State government regarding water rights. That is a very, very difficult question and it has been long in developing. It did not just land full-grown with us right now. It has been developing over a period of years.

The Federal Power Act, which was enacted in 1920, includes some rather interesting language which seems to me to be largely ignored in the construction of the statute, but nevertheless is still there.

Section 27 of the Act says that: "Nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective states relating to the control, appropriation, use, or distribution of water used in irrigation

or for municipal or other uses or any vested right acquired therein."

That is oftentimes quoted. What is not so often quoted is section of the Federal Power Act—excuse me, section 9, 9(a)(2), which says:

"Satisfactory evidence that the applicant has complied with the requirements of the laws of the state or states within which the proposed project is to be located with respect to bed and banks and to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power, and any other business necessary to effect the purposes of a license under this Act."

It seems to me to be perfectly clear on the face of the statute that Congress believed in writing the Federal Power Act 68 years ago that whatever was done under the Federal Power Act would be done pursuant to state law with respect to the water, which I strongly hold.

I am mindful of the fact that in the *First Iowa* case, decided 25 years after the Act was passed, the Supreme Court of the United States decided there could not be two masters of the water and they opted for the Federal Government. I am aware that in the 40 years since the *First Iowa* case that has been progressively delineated by courts, court decisions, and by FERC.

I am concerned, however that we have gotten ourselves to the point where in conjunction with the Federal Power Act and other Federal statutes, we have accomplished an almost total preemption of the field by the Federal Government if current processes being followed by FERC are allowed to continue. That is a matter of critical concern in any area of the country in which water is appropriated to its limits, and demands beyond those limits are made, as is the case throughout most of the arid west.

I do not know what the answer is. I do not know what FERC can do right now other than try to find some way to work within the framework of the statutes as interpreted by the courts and give some deference to the rights of the states to make determinations with respect to a resource as finite and critical as water.

I know that water rights is not your area of expertise, and I know it is one of the most complex and difficult questions that might be asked, and I do not know whether you have anything you can add at this time to the discussion of where we might head as a way to find the solution to that growing problem.

Ms. MOLER. Senator, you correctly observed, I am not a water law expert. I knew I was in trouble when Gary Ellsworth got out the Federal Power Act on this issue. I am familiar with the *First Iowa* case. I am aware that it has been a controversy over a number of years because from time to time people have proposed "technical amendments" to things done by this committee to change that. They have never gotten anywhere.

I do not know if it is, I genuinely do not know if it is an area of the law that can be resolved administratively with the Commission or whether it takes congressional action. I will certainly become familiar with it if and when I am confirmed by the Senate and become a Commissioner.

Senator MCCLURE. Well, I think you can drop the "if" from that because I think you will be confirmed, and I am neither surprised nor distressed by your answer.

I started practicing law in 1950 in an area of irrigated agriculture in the State of Idaho, and one of the areas of my specialty in my practice was water law. I became a member of the Idaho Reclamation Association in 1953 and of the National Reclamation Association, now the National Water Users Association, in 1953, and served on various committees and boards of that association in the years that followed.

I used to believe I knew what water law is, what it meant. I am not nearly so certain today that I know. I say that by way of preamble, because it is complex, and it is evolving, and it is extremely, extremely contentious and difficult.

But I was really, really concerned as I see the effects, the cumulative effects of Federal administrative reach into this field as epitomized by the *Horseshoe Bend* case last year in which the state asked FERC to subordinate a license to future upstream decisions by the state with respect to water rights on the Payet River, and FERC in very polite and legal terms said bug off, it is none of your business, we will run that river.

Now, those words that I use characterize their reaction.

I watch other decisions that flow from that. We last year passed the Swan Falls bill that attempts to resolve another issue on the Snake River, and we are going through the adjudication of the water rights on the Snake River Basin with extremely difficult and contentious issues, but FERC is right in the middle of that, and what FERC does as we go forward is certainly going to affect what happens.

I notice that the State of Idaho has joined with other states in an appeal on a decision of the State of California in which the State of California sought to protect minimum stream flows on a river in California on which there is a license of the Federal Power Commission, of FERC, with respect to a power facility, and the decision of FERC in that instance was that the State of California no longer has anything to say about the stream flows except as an applicant to FERC, and that FERC will make all the basic decisions with respect to the maintenance of stream flow because there is a Federal license on that stream.

I cannot tell you how that inflames the passions of people who are vitally concerned with those particular resources. There has to be a better way than simply confrontation.

I share with you the concern as to whether or not there is administrative action that can be done to ameliorate the current confrontation or whether we will take legislative action. I am mindful of the difficulties we have had over the years of trying to find legislative solutions because they are no less controversial because they happen to be legislative than simply administrative. And it has always provoked bitter fights whenever that legislative solution was sought. I am certain that would be true again.

And so I really appeal to you to be sensitive to that issue and see whether or not there is administrative action that can be taken to try to find a middle ground between total preemption and total federal subjugation. It has always provoked bitter fights whenever

that legislative solution was sought. I am certain that would be true again, and so I really appeal to you to be sensitive to that issue and see whether or not there is administrative action that can be taken to try to find a middle ground between total Federal preemption and total Federal subjugation. I do not want to see either of those occur, and I do not think that is the intent of the statutes nor the import of the statutes.

But this will remain a very difficult problem for all of us unless we can find some way to move towards the middle on those kinds of decisions.

I will look forward to discussing that with you and working with you, if indeed there is anything that we can do in a legislative sense, have to do in a legislative sense, to find a solution to that very perplexing problem.

I have no other questions. Certainly I have known your work. There is no need for me to ask you questions about that work because it has been an open book. You have always been forthright. You have always put your views on the table. You have always expressed your views, and I liked what Senator Domenici said a moment ago about your ability to have your own views and at the same time to work with members of the committee who have other views.

I think that is a very good sign of your ability to work in the collegial atmosphere of a Commission made up of five different, separate personalities, assuming that we will have five.

I might just note parenthetically, and I am sorry Senator Metzenbaum is not here——

Senator FORD. I am, too. I had a statement for him.

Senator MCCLURE. Unless we can find a way to break the logjam on confirmations, there will not be a quorum of that Commission, and I say that not as a threat but as a fact.

Mr. Stalon and Ms. Hesse are both acting on statutory extensions of their term that will expire on October 20. We have one vacancy and another one that is to occur, and we could very easily see before the end of this year that there is no quorum, and I do not say that by way of anything other than an observation of the necessity for the political compromises that may be necessary to move the confirmation of all persons.

I had a conversation yesterday with Ms. Hesse with respect to her nomination, and I would in honesty and candor say to you what I had to say to her. I am not certain that any nominations are going to move until there is some kind of resolution of the political impasse. That is not a personal observation, but I think you know that, and I would be less than candid if I did not raise that here today.

But I wish you very well and look forward to the days when we can say Commissioner, welcome back.

Ms. MOLER. Thank you.

Senator FORD. Senator Domenici?

Senator DOMENICI. Thank you very much, Mr. Chairman.

Betsy, I was not going to ask any questions regarding the notice of proposed rulemaking, the so-called NOPRs, dealing with our utility procurement of power from third party suppliers, but our Chairman indicated that it is his view that it ought to go slow. I

concur. But I think I will ask you one question, it has two parts, and I really do not intend the question to be a specific in the sense of what are you going to do regarding these proposed rulemaking areas, but just two that you might generally discuss on the record with us, again, without being specific on how you might come down.

Could you just share your view with us on PURPA over the last eight or ten years in a general way, how do you see it in terms of its implementation, and then second, part of it, how do you view this problem of increasing the competition in generating electricity as it pertains to nontraditional suppliers, just your own current state of mind regarding the latter, and your observations regarding PURPA rather briefly, if you can.

Ms. MOLER. I think when PURPA was enacted, you know, my attention was certainly focused on one of the other parts of the Natural Energy Act, the Natural Gas Policy Act. PURPA was enacted, I believe, by the Congress to encourage nontraditional power sources and to require electric utilities to purchase power from them. It has grown I think beyond the Congress' wildest dreams as far as the amount of power that is now supplied by PURPA qualified facilities, the diversity and what has happened.

There have been a couple of oversight hearings about PURPA, and I think it is generally conceded that it has turned into something other than what we thought we were doing. That is, of course, typically the case.

I think the Commission is trying to sort out PURPA in a new era. There are a lot of electric utilities who do not want to build their own new capacity. That has not been a rewarding task of late. A lot of them are looking to PURPA facilities to supply power. That is a healthy aspect as far as they are concerned. Obviously, they draw the line at forced transmission for independent power producers or PURPA qualifying facilities. I don't believe that the Commission has authority to require, legally require transmission by QFs to third parties. The wheeling issue has been one that has been debated a long time in the Congress, and unless the Congress changes its mind and gives the Commission that authority, I do not believe they can go that far. And I have talked to Chairman Hesse about this.

As far as what is the state of play on PURPA and the new rulemakings and so forth, I would have to be candid with you, I have begun to delve into that issue. It is extraordinarily complex. The Commission is having public hearings next Thursday and Friday on the notices of proposed rulemaking. They have replies, final comments due in mid-August. And I have not formulated any definitive views about that proposed rulemaking.

I know PURPA is the law of the land. Clearly electric utilities have to connect with qualifying facilities and buy their power at avoided cost rates.

Senator DOMENICI. Thank you very much.

Thank you, Mr. Chairman.

Senator FORD [presiding]. I do not know whether the Chairman is coming back or not. I get to close it up here, they tell me.

I have been surrounded by lawyers here this morning, and being a nonlawyer, it makes me kind of wonder about the complications

of the law. They probably have made the law as complicated as it is today.

About the only knowledge I have of the law is a little story that goes around in my part of the country, one of the most emotional problems is boundary rights, and we have deeds that say from the iron stake at the corner of the Smith and Jones road running south to the first oak tree. Well, the oak tree has been gone for some time, you know. So they get in fights over the boundary lines.

In one case there, the lower court—we have three branches, district, appeals and supreme—and the lower court fined this one farmer $500 for the fight that he got into with his neighbor. So his lawyer explained it to him. He said, you know, you can pay the fine and it is over with, or you can appeal it to the higher court. So the farmer said "peal her up, peal her up."

So they appealed it to the court of appeals, and they found for the lower court, and the lawyer explained it to him again, and the farmer said "peal her up, peal her up." It got to the supreme court, the supreme court not only sustained the fine but gave him 60 days in jail, and the lawyer explained it to the farmer, and he said what do you want to do, and he said "peal her down, peal her down." [Laughter.]

That is kind of the way I feel about it today.

Betsy, I hope that you do not become embroiled in other individual nominees because your expertise is needed on this board, and I was delighted to hear the ranking member, the distinguished Senator from Idaho, Mr. McClure, say there was no "if" to your nomination being approved; it was just when. And we have a very short period of time, and I would like that when to be as soon as possible, and I agree with the Senator from Idaho that I will work diligently to try to be sure that the one we worry about is fifth, if at all, and we will go from there.

So Betsy, I am for you lock, stock and barrel, as we say at home. And with that statement, if you have no further statement, Senator McClure, this hearing is adjourned.

[Whereupon, at 11:48 a.m., the hearing adjourned.]

APPENDIXES

APPENDIX I

Informational Statement of Elizabeth Anne Moler

UNITED STATES SENATE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Moler (LAST) Elizabeth (FIRST) Anne (OTHER)

Position to which nominated: Member, Federal Energy Regulatory Cmsn. Date of nomination: July 6, 1988

Date of birth: 24 (DAY) Jan. (MONTH) 1949 (YEAR) Place of birth: Salt Lake City, Utah

Marital status: Married Full name of spouse: Thomas Blake Williams

Name and ages of children Blake Martin Williams, 3

Education:

Institution	Dates attended	Degrees received	Dates of degrees
The American University School of Int'l Svc.	9/67 - 12/70	B.A.	12/21/70
Johns Hopkins University Dept. of Political Sci.	9/71 - 5/72	None	
George Washington Univ. National Law Center	9/74 - 5/77	J.D.	5/22/77

Employment record: List below all positions held since college, including the title and description of job, name of employer, location, and dates.

2/71 - 12/72: Staff Assistant, Hon. Mike Gravel, U.S. Senate, Washington, D.C. 20510 Assistant to the Administrative Assistant on special projects; legislative correspondence.

1/73 - 9/75: Chief Legislative Assistant, Hon. Floyd K. Haskell, U.S. Senate, Washington, D.C. 20510 Responsible for supervising legislative staff, researching and writing energy and natural resources legislation, speech writing, and correspondence.

9/75 - 2/76: Law Clerk, Sharon, Pierson, Semmes, Crolius, and Finley, Washington, D.C. Responsible for legal research and writing for a variety of clients.

2/76 - 5/77: Professional Staff Member, Committee on Energy and Natural Resources (formerly Committee on Interior and Insular Affairs), United States Senate, Washington, D.C. 20510

Employment record—Continued

Responsible for legislative and oversight activities pertaining to the Trans-Alaska Pipeline System, the West Coast crude oil surplus, and crude oil pricing.

5/77 - 1/81: Counsel; 1/81 - 1/87: Minority Counsel; 1/87 - Present: Senior Counsel, Committee on Energy and Natural Resources, United States Senate, Washington, D.C. 20510 (See addendum.)

Military service: Describe any military service not listed above, including dates, rank, and type of discharge.

None

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

The American University, School of International Service, partial tuition scholarship, 9/67 - 12/70; Dean's List; Mortarboard Women's Honor Society

Johns Hopkins University, Dept. of Political Science, graduate fellowship, 9/71 - 5/72

Bonneville High School, Ogden, Utah, National Honor Society, National Merit Scholarship Semifinalist.

(See addendum.)

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Dates	Office held (if any)
American Bar Association	8/3/79 - Present	None
D.C. Bar Association	5/26/78 - Present	None
International Energy Program, The Johns Hopkins Foreign Policy Institute	6/87 (approx.) - Present	Member, Advisory Council
Institute for the Study of Regulation (now dissolved)	85 - 87	Member, Board of Directors

Published writings: List the titles, publishers and dates of any books, articles, or reports you have written.

"The Congressional Wrestling Match," in U.S. Natural Gas After Deregulation: A New Business (Cambridge Energy Research Associates, 1985)

"The Political Marketplace and the NGPA," in Diversification, Deregulation, and Increased Uncertainty in the Public Utility Industries (Michigan State University, 1983)

Mexico: The Promise and Problems of Petroleum (with James T. Bruce), Committee on Energy and Natural Resources (Comm. Print 96-3, Mar. 1979)

Future employment relationships:

1. Will you sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate?

Yes.

2. Do you have any plans after completing government service to resume employment, affiliation or practice with your current or any previous employer, business firm, association or organization?

No.

3. Has a commitment for employment after you leave government been made to you by anyone? Have you made any such commitment?

No.

4. (a) If you have been appointed for a fixed term, do you expect to serve the full term?

Yes.

Future employment relationships—Continued

(b) If you have been appointed for an indefinite term, are there any known limitations on your willingness or ability to serve for the foreseeable future?

Financial statement:

1. Attach a copy of your Executive Personnel Financial Disclosure Report (SF 278).

2. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services and firm memberships or from former employers, clients, and customers. Amounts should be indicated by the categories established for reporting income on Form SF 278, Schedule A.

None.

3. Are you currently a party to any legal action? If so, describe its nature and status.

No.

4. Have you ever declared bankruptcy? If so, describe the circumstances.

No.

5. Have you filed a Federal income tax return for each of the last 10 years? If not, please explain.

Yes.

6. Has the Internal Revenue Service ever audited your Federal tax return? If so, what resulted from the audit?

No.

Potential conflicts of interest:

1. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

2. Describe any business relationship, dealing or financial transaction (other than taxpaying) that you have had during the last 10 years with the Federal Government, whether for yourself or relatives, on behalf of a client, or acting as an agent, which might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

3. Describe any lobbying activity which you have performed during the past 10 years with respect to legislative or administrative actions at the Federal, State or local level.

None.

4. Have you been informed of the conflict of interest laws and regulations applicable to the position to which you have been nominated?

Yes.

Potential conflicts of interest—Continued

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to this form and the attachments thereto. Attach a statement of the appropriate agency ethics official explaining the applicable laws or regulations, any potential conflicts, and the action required to resolve such conflicts.

I am not aware of any potential conflict of interest.

6. Explain how you will resolve any potential conflicts of interest that may arise in the future if you are confirmed for the position for which you have been nominated.

If a potential conflict of interest were to arise, I would consult with the appropriate agency ethics official and take whatever steps would be necessary to resolve it.

Public disclosure: Do you have any objections to this form and the attachments thereto being made public?

No.

AFFIDAVIT

[illegible]

I, _____ being duly sworn, hereby state that I have read the foregoing Statement for Completion by Presidential Nominees, including all attachments thereto, and that the information provided therein is, to the best of my knowledge and belief, current, accurate, and complete.

Elizabeth Anne Moler
(Signature of Nominee)

Subscribed and sworn to before me this 7 day of July, 1988

Edward P. Hawkins Jr.
Notary Public

NOTARY PUBLIC
DISTRICT OF COLUMBIA

MY COMMISSION EXPIRES JANUARY 31, 1989

Form approved by the Committee February 5, 1985.

U.S. GOVERNMENT PRINTING OFFICE: 1987—67-074

Elizabeth Anne Moler
Addendum to Statement for Completion by Presidential Nominees
Committee on Energy and Natural Resources

Employment Record (continued)

Principal staff person responsible for all natural gas issues, including oversight activities and pending legislation. Also principal staff person responsible for oversight and legislative activities pertaining to Federal budget issues, clean coal technology and fuel use issues, international energy policy issues, oil and natural gas pipelines, and some electric utility policy issues.

Duties include advising Members of the Committee on pending legislation, researching and writing legislation, writing briefing materials, statements, and speeches, writing Committee reports and Conference Committee reports. Responsible for design, installation, and administration of a personal computer local area network for Committee use.

Honors and Awards (continued)

Listed, Who's Who of American Women; Who's Who in American Law.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 12, 1988

Elizabeth A. Moler, Esq.
Senior Counsel
Committee on Energy and Natural Resources
United States Senate
S.D. 354
Washington, DC 20510

Dear Ms. Moler:

This letter serves as the statement from the Designated Agency Ethics Counselor of the Commission required by question six (page five) of the Statement for Completion by Presidential Nominees that you are submitting to the United States Senate Committee on Energy and Natural Resources. I have reviewed your Standard Form 278 (Financial Disclosure Report), dated May 23, 1988, and have issued my opinion to Frank Q. Nebeker, Director, Office of Government Ethics, that the Form discloses no conflicts of interest under the Department of Energy Organization Act (DOE Act), P.L. 95-91, the Commission's Standards of Conduct (18 C.F.R. §§ 3c.201-206) or the conflict of interest provisions generally applicable to Federal Government officials.

Section 602(a) of the DOE Act prohibits supervisory employees from knowingly receiving compensation from, holding any official relation with, or having any pecuniary interest in any energy concern. The term "energy concern" is defined in Section 601(b) of the DOE Act to include any entity "significantly engaged in the business" of energy development, extraction, production, refining, transportation, distribution or sale, or significantly engaged in conducting research and debelopment related to these activities, or in research, development or demonstration under a DOE-funded program. The term also includes any entity holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained. Under DOE regulations, a widely diversified mutual fund does not constitute an energy concern. 10 C.F.R. 1010.103(k)(4).

Further, Section 208, Title 18, United States Code, and applicable Commission regulations, 18 C.F.R. § 3c.204(b)(3), prohibit a government official from participating personally and substantially in any particular matter in which she, her spouse, minor child, partner, or organization in which she is serving as

officer, director, trustee, partner, or employee, has a financial interest, or in which a prospective employer has a financial interest. This provision has been interpreted to prohibit participation in any particular matter whose effect on the relevant financial interest would be direct and predictable.

If I may be of further assistance, please let me know.

Sincerely,

Michael Schopf
Associate General Counsel
Enforcement, General Law and
Rulemaking

Enclosure

cc: Senate Committee on
Energy and Natural Resources

Executive Level Position Statements

Position Title:- Member, Federal Energy Regulatory Commission

Grade: EL-IV - Presidential Appointee - (PAS)

The incumbent serves as a member of the five-man Federal Energy Regulatory Commission and is responsible for meeting officially with the other members to decide issues concerned with:

- The issue and enforcement of licenses for hydro-electric power-projects
- The establishment and enforcement of rates and charges for the sale and transmission of electricity and for the non-emergency interconnection of facilities for the generation, transmission, and sale of electricity
- The establishment and enforcement of rates and charges for the transmission and sale of natural gas
- The issue and enforcement of certificates of public convenience and necessity for construction of facilities, abandonment of services or facilities, etc.
- The establishment and enforcement of curtailments of natural gas (other than establishment and review of curtailment priorities)
- The regulation of mergers and securities acquisition under the Natural Gas Act and Federal Power Act
- Other functions as may be assigned by the Secretary

The incumbent is appointed by the President but reports to the Chairman, FERC and is not subject to the supervision and direction of any other official of the Department, including the Secretary.

SF 278 (Rev. 1/89)
OPM Chapter 734
U.S. Office of Personnel Management

Financial Disclosure Report

Form Approved
OMB No. 3209-0972

Reporting Status (Check Appropriate Box)			Agency Use Only	OGE Use Only	Date of Appointment, Candidacy, Election or Nomination (Mo., Day, Yr.)	Termination Date (If Applicable) (Month, Day, Year)
☐ Incumbent	☒ New Entrant, Nominee, or Candidate	☐ Termination Filer			7/6/88	

Reporting Individual's Name	Last Name: Moler	First Name and Middle Initial: Elizabeth A.
Position for Which Filing	Title of Position: Member (Nominee)	Department or Agency (If Applicable): Federal Energy Regulatory Commission
Location of Present Office	Address (Number, Street, City, State and ZIP Code): Committee on Energy and Natural Resources U.S. Senate, SD-354, Washington, D.C. 20510	Telephone No. (Include Area Code): (202) 224-0612
Position(s) Held With the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Senior Counsel (Present)	
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Committee on Energy and Natural Resources	Do You Intend to Create a Qualified Diversified Trust? ☐ Yes ☒ No

Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge and belief.	Signature of Reporting Individual: Elizabeth A. Moler	Date (Month, Day, Year): 5/23/88 7/7/88 Rev.
Other Review (If desired by agency)	Signature of Other Reviewer	Date (Month, Day, Year)
Agency Ethics Official's Opinion The information contained in this report discloses no conflict of interest under applicable laws and regulations.	Signature of Designated Agency Ethics Official/Reviewing Official	Date (Month, Day, Year)
Office of Government Ethics Use Only	Signature	Date (Month, Day, Year)

Comments of Reviewing Officials (If additional space is required, use the reverse side of this sheet)

(Check box if comments are continued on the reverse side) ☐

Reporting Periods

Incumbents: Complete Schedules A, B, C, and Part I of D. The reporting period is the preceding calendar year except for Part II of Schedule C and Part I of Schedule D where you must also include any positions held or agreements or arrangements made from the beginning of the filing year until the date you file.

Termination Filers: Complete Schedules A, B, C, and Part I of D. The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination.

Nominees, New Entrants and Candidates for President and Vice President: Complete Schedules A, C, and D. (Candidates do not file Part II of Schedule D.)

- **Schedule A**—The reporting period for income (BLOCK C) and Transactions Test (BLOCK D) is the preceding calendar year and the current calendar year up to the date of filing. Value assets in BLOCK B as of any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part I** (Liabilities)—The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.
- **Schedule C, Part II** (Agreements and Arrangements)—Show any agreements or arrangements as of the date of filing.
- **Schedule D**—The reporting period is the preceding **two** calendar years and the current calendar year up to the date of filing.

SF 278 (Rev. 1/92)
5 CFR Chapter XVI
U.S. Office of Personal Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name	Assets and Income	Page Number		Schedule A
Elizabeth A. Moler				

All Filers: In BLOCK A report (a) the identity of each asset held for the production of income at the close of the reporting period which had a fair market value exceeding $1000 and (b) any other asset or source of income which generated over $100 in income during the reporting period. This includes but is not limited to employers, stocks, bonds, tax shelters, bank accounts, real property, mutual funds, pensions, IRA assets, assets of certain trusts, commodities futures, personal businesses and partnership interests. Exclude your personal residence unless you rent it out. See instructions for rules on bank accounts and complex holdings.

All Filers: In BLOCK B report the value of each asset listed in BLOCK A which had a fair market value exceeding $1000 at the close of the reporting period.

All Filers: In BLOCK C report the type and amount of income exceeding $100 or more received from the assets and other sources of income listed in BLOCK A. You must report the **actual amount** of any income not of a type specifically noted below. You need not report the actual amount of your spouse's earned income, only the source in BLOCK A. You may not check "qualified trust" unless you have a blind trust which has been specifically approved by the Office of Government Ethics. If you, your spouse or dependent child are the beneficiary of a trust which no one of you created and has no knowledge of the assets, refer to the instructions to see if it qualifies as an "excepted trust." If "none" (or less than $101) is checked under Category of Amount of Income, no other entries need be made in BLOCK C for that item.

Incumbents and Termination Filers only: In BLOCK D, for any real property, stocks, bonds, commodities futures and other securities listed in BLOCK A, did you purchase, sell, or exchange the item during the reporting period for a value that exceeds $1000?

BLOCK A Assets & Income Sources			BLOCK B Valuation of Assets								BLOCK C Income																				BLOCK D Transactions Test	
Identify each asset and income source of yours, your spouse(S) and your dependent child (DC). NONE ☐			Category of Value (X)								Type of Income (X)							Category of Amount of Income (X)														If you, complete Schd. B Part I for those assets including those sold for a loss.	
S or DC	Exam ple		None (or less than $1001)	$1,001-$2,000	$2,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000	Dividends	Rent	Interest	Capital Gains	Excepted Trust	Qualified Trust	Other (Specify Type)	None (or less than $101)	$101-$1,000	$1,001-$2,500	$2,501-$5,000	$5,001-$15,000	$15,001-$50,000	$50,001-$100,000	Over $100,000	Actual Amount Only if "Other" Specified	Date (Mo., Day, Yr.) Only if Honoraria	YES	NO
		X Y Z Common			X					X																			X	
		Doe Jones & Smith, Hometown, USA		X												ownership income			X											
1 S		Thomas B. Williams-Spouse U.S. Senate, Wash., D.C.														Salary								$50,000						
2		T. Rowe Price Tax-Exempt Money Fund		X								X						X												X
3		T. Rowe Price Growth & Income Fund (IRA)		X						X								X												X
4		T. Rowe Price Realty Income Fund II (IRA)		X									X					X												X
5		Northwestern Mutual Life Ins. Co. (IRA)			X					X		X						X										X		
6 S		T. Rowe Price Tax-Exempt Money Fund		X								X						X												X
7 S		T. Rowe Price Growth & Income Fund (IRA)		X						X								X												X
8 S		T. Rowe Price Realty Income Fund II (IRA)		X									X					X												X
9 S		Northwestern Mutual Life Ins. Co. (IRA)			X					X		X						X										X		
10 DC		T. Rowe Price Growth & Income Fund		X						X								X												X

PREVIOUS EDITION USABLE

278-208

SF 278 (Rev. 1983)
5 CFR Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0060

Reporting Individual's Name

Elizabeth A. Holer

Page Number		Schedule B

Part I
Transactions

Incumbents and Termination Filers only: Report any purchase, sale or exchange by you, your spouse or dependent child during the reporting period of any real property, stocks, bonds, commodities futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction between you, your spouse or your dependent child.

NONE ☐

			Type of Transaction (X)				Amount of Transaction (X)					
S or DC	Example	Identification of Assets	Purchase	Sale	Exchange	Date (Mo., Day, Yr.)	$1,001-$8,000	$8,001-$15,000	$15,001-$50,000	$50,001-$100,000	$100,001-$250,000	Over $250,000
	Example	X Y Z Common	X			2/1/83			X			
1		Not applicable.										
2												
3												
4												
5												
6												

Part II
Gifts, Reimbursements and Travel Expenses

Incumbents and Termination Filers only:
Report the source, a brief description and the value of: (1) in-kind gifts of transportation, lodging, food or entertainment received from one source totaling $250 or more unless received as personal hospitality at the donor's personal or family residence; (2) other gifts received from one source totaling $100 or more in value; and (3) cash reimbursements of $250 or more received from one source. Exclude gifts and reimbursements received by your spouse that were given totally independent of their relationship to you. **Exclude** transportation, lodging, food and reimbursements from the U.S. Government. For (1) and (2), **exclude** gifts from relatives and **exclude** gifts of $35 or less when aggregating them for the total from one source. See instructions for further exclusions.

NONE ☐

S		Source (Name and Address)	Brief Description	Value
	Example	Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 8/15/83	$500
	Example	Nat'l Assn. of Rock Collectors, NY, NY	Leather briefcase for retiring president	$125
1		Not applicable.		
2				
3				
4				
5				
6				

PREVIOUS EDITION USABLE

278-1SB

SF 278 (Rev. 1/90)
FPM Chapter 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0002

Reporting Individual's Name

Elizabeth A. Moler

Page Number		Schedule C

Part I
Liabilities

All Filers: Report liabilities over $10,000 owed to any one creditor at any time during the reporting period by you, your spouse or dependent child. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out, loans secured by automobiles, household furniture or appliances, and liabilities owed to relatives. See instructions for revolving charge accounts.

NONE [x]

		Creditor (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (X) $10,001 to $15,000	$15,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	Over $250,000
S or DC	Examples	First District Bank, Washington, DC	Mortgage on rental property, Rehoboth Beach, Delaware	1981	13%	25 yrs.			X		
		John Jones, 123 J St., Washington, DC	Promissory note	1979	10%	on demand	X				
1											
2											
3											
4											
5											
6											

Part II
Agreements Or Arrangements

All Filers: Report your agreements or arrangements for future employment, leaves of absence, continuation of payment by a former employer (including severance payments), or continuing participation in an employee benefit plan. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

NONE [x]

	Status and Terms of any Agreement or Arrangement	Parties	Date (Mo., Yr.)
Example	Pursuant to partnership agreement, will receive capital account & partnership share calculated on service performed through 11/83	Doe Jones & Smith, Home town, USA	7/75 prnership agmnt.

PREVIOUS EDITION USABLE

278-1SB

SF 278 (Rev. 1/92)
Filing Guide 734
U.S. Office of Personnel Management

Form Approved
OMB No. 3209-0006

Reporting Individual's Name

Elizabeth A. Moler

Page Number		Schedule D

Part I
Positions Held Outside U.S. Government

All Filers: Report any positions held during the applicable reporting period. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution.

Exclude positions with religious, social, fraternal, or political entities or those solely of an honorary nature.

NONE ☐

	Organization (Name and Address)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/82	6/83
	Doe Jones & Smith, Hometown, USA	Law firm	Partner	7/75	11/83
	Institute for the Study of Regulation (now dissolved) 1101 17th St., N.W., Wash., D.C. 20036	Non-profit education	Member, Bd. of Dir.	6/85	6/87
	Int'l Energy Program, Johns Hopkins Foreign Policy Institute Johns Hopkins Univ. School of Adv. Int'l Studies, Wash., D.C.	Non-profit education	Member, Advisory Council	6/87 (approx.	Pres.

Part II
Compensation In Excess Of $5000 Paid by One Source

Nominees and New Entrants only: Report sources of such compensation received by you or your business affiliation for services directly provided by you during the reporting period. This includes the names of clients and customers of any corporation, firm, partnership or other business enterprise, or any nonprofit organization, when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

NONE ☒

	Source (Name and Address)	Brief Description of Duties
Examples	Doe Jones & Smith, Hometown, USA	Legal services
	Metro University (client of Doe Jones & Smith) Hometown, USA	Legal services in connection with university construction

PREVIOUS EDITION USABLE

278-1/92

APPENDIX II
Responses to Additional Questions Submitted by Elizabeth Anne Moler

---

J. BENNETT JOHNSTON, LOUISIANA, CHAIRMAN
DALE BUMPERS, ARKANSAS
WENDELL H. FORD, KENTUCKY
HOWARD M. METZENBAUM, OHIO
JOHN MELCHER, MONTANA
BILL BRADLEY, NEW JERSEY
JEFF BINGAMAN, NEW MEXICO
TIMOTHY E. WIRTH, COLORADO
WYCHE FOWLER, JR., GEORGIA
KENT CONRAD, NORTH DAKOTA
JAMES A. McCLURE, IDAHO
MARK O. HATFIELD, OREGON
LOWELL P. WEICKER, JR., CONNECTICUT
PETE V. DOMENICI, NEW MEXICO
MALCOLM WALLOP, WYOMING
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLAHOMA
CHIC HECHT, NEVADA
DANIEL J. EVANS, WASHINGTON
DARYL H. OWEN, STAFF DIRECTOR
D. MICHAEL HARVEY, CHIEF COUNSEL
FRANK M. CUSHING, STAFF DIRECTOR FOR THE MINORITY
GARY G. ELLSWORTH, CHIEF COUNSEL FOR THE MINORITY

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

July 14, 1988

Ms. Elizabeth A. Moler
Senior Counsel
Senate Committee on Energy and
Natural Resources
Washington, D.C. 20510

Dear Ms. Moler:

Enclosed are questions for you submitted for the record of your July 14 confirmation hearing by Senator Metzenbaum.

If you or your staff have any questions please call Mike Harvey at 224-0611.

With kindest personal regards, I am

Sincerely,

J. Bennett Johnston
Chairman

JBJ:mhB
Enclosure

ADDITIONAL QUESTIONS FROM SENATOR METZENBAUM

For Elizabeth A. Moler

1. The stated goals of the FERC electricity proposals include utilizing competitive forces and encouraging greater efficiencies to lower electric costs to consumers.

   How can these goals be realized without a condition requiring open access transmission of electricity as an integral part of the FERC electric policy initiative?

2. I am told that Ohio currently faces a large reserve margin of electricity capacity that is being paid for by the Ohio electric ratepayers. Yet, areas in the northeast may be facing power shortages in the near future.

   How would you approach the problem that is preventing Ohio from selling its excess capacity to the northeast, so that ratepayers in both areas would benefit?

3. A recent FERC rule, Order 451, now before the U.S. Court of Appeals, has dramatically raised the cost of old, forever regulated gas.

   A second recent FERC rule, Order 490, would allow producers to abandon their obligations to supply their customers with gas at the end of the contract term--without FERC approval, as required by the Natural Gas Act & Supreme Court rulings.

   a. What are your views on these gas rules?

   b. Do you believe they comport with the Congressional intent in the Natural Gas Act and the Natural Gas Policy Act?

4. FERC's take-or-pay policy would spread the burden of take-or-pay liabilities among producers, shareholders of pipelines, and firm supply gas consumers. As I understand it, shareholders of local distribution companies and some large industrial consumers would not be forced to share in this burden.

   a. Is that equitable, in your opinion?

   b. Do you have any ideas as to how to force all parties to share in take-or-pay liabilities?

J. BENNETT JOHNSTON, LOUISIANA, CHAIRMAN
DALE BUMPERS, ARKANSAS
WENDELL H. FORD, KENTUCKY
HOWARD M. METZENBAUM, OHIO
JOHN MELCHER, MONTANA
BILL BRADLEY, NEW JERSEY
JEFF BINGAMAN, NEW MEXICO
TIMOTHY E. WIRTH, COLORADO
WYCHE FOWLER, JR., GEORGIA
KENT CONRAD, NORTH DAKOTA
JAMES A. McCLURE, IDAHO
MARK O. HATFIELD, OREGON
LOWELL P. WEICKER, JR., CONNECTICUT
PETE V. DOMENICI, NEW MEXICO
MALCOLM WALLOP, WYOMING
FRANK H. MURKOWSKI, ALASKA
DON NICKLES, OKLAHOMA
CHIC HECHT, NEVADA
DANIEL J. EVANS, WASHINGTON
DARYL H. OWEN, STAFF DIRECTOR
D. MICHAEL HARVEY, CHIEF COUNSEL
FRANK M. CUSHING, STAFF DIRECTOR FOR THE MINORITY
GARY G. ELLSWORTH, CHIEF COUNSEL FOR THE MINORITY

United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, DC 20510-6150

July 22, 1988

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
JUL 22 1988
WASHINGTON, D.C. 20510

Hon. J. Bennett Johnston
Chairman
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed are my answers to the questions submitted for the record of my July 14 confirmation hearing.

With best wishes,

Sincerely,

Elizabeth A. Moler

Elizabeth A. Moler
Senior Counsel

EAM/hal

ANSWERS TO ADDITIONAL QUESTIONS FROM SENATOR METZENBAUM

FROM ELIZABETH ANNE MOLER

Question 1: The stated goals of the FERC electricity proposals include utilizing competitive forces and encouraging greater efficiencies to lower electric costs to consumers. How can these goals be realized without a condition requiring open access transmission of electricity as an integral part of the FERC electric policy initiative?

Answer 1: I understand that Chairman Hesse considers the pending rulemaking proposals (Independent Power Producers, RM88-4, Bidding Programs, RM88-5, and Administrative Determination of Full Avoided Costs, RM88-6) to be "Phase I" of an overall electric strategy. Public hearings on the proposals are being held this week; final reply comments on the proposals are due August 15. She hopes that final rules will be issued before the end of the year.

She has announced that "Phase II" will focus on the Commission's price regulation of electric transmission service. While no firm timetable for action has been set, draft Notices of Proposed Rulemakings may be ready for consideration by the end of the year. She has stated that until the Commission has had time to reform its pricing rules, and to observe how effective pricing reforms can be for increasing voluntary access, it would be premature to embark on a transmission access initiative such as the one suggested by the question.

I have begun to review the proposals and public comments on them. Based on what I know now, I believe that the proposals already issued represent an ambitious workload.

I agree that reforming the rate structure for wholesale electric transmission service is an appropriate next step. Theoretically rates for new transmission service should be based on marginal costs, rather than on embedded costs. However, there is no consensus on how the theory of marginal cost pricing should actually be implemented.

The pending NOPR's, and the proposed transmission pricing initiative, represent very significant proposed changes for the industry. Properly implemented, they could well realize the stated goals of utilizing competitive forces and encouraging greater efficiencies to lower electric costs to consumers. Based on what I know now, I do not believe that a condition requiring open access transmission of electricity is either desirable or necessary to achieve the stated goals.

Question 2: I am told that Ohio currently faces a large reserve margin of electricity capacity that is being paid for by the Ohio electric ratepayers. Yet, areas in the northeast may be facing power shortages in the near future. How would you approach the problem that is preventing Ohio from selling its excess capacity to the northeast, so that ratepayers in both areas would benefit?

Answer 2: In order to answer your question, there are two major issues that need to be addressed. First would be the rates charged for transmitting Ohio's excess capacity to the northeast. Second would be the whether the actual facilities exist to transmit the electricity

With respect to the first issue, FERC is considering reforming the rate structure for wholesale electric transmission service, as discussed above. Doing so would encourage utilities to transport Ohio's excess electricity to the Northeast. I would support the effort to reform the rate structure to encourage more efficient transportation. However, encouraging that transportation is only one half of the equation. The other half is whether sufficient power lines and actual physical facilities necessary to transmit the electricity already exist or need to be built. I understand that there is a significant transportation bottleneck between Ohio and the northeast that must be eliminated or overcome before the increased transportation could occur. FERC does not have jurisdiction over siting and location of transmission facilities; that is primarily a state function. Construction of such facilities should be encouraged where necessary, but FERC does not have statutory authority to act in this area.

Question 3: A recent FERC rule, Order 451, now before the U.S. Court of Appeals, has dramatically raised the cost of old, forever regulated gas. A second recent FERC rule, Order 490, would allow producers to abandon their obligations to supply their customers with gas at the end of the contract term -- without FERC approval, as required by the Natural Gas Act & Supreme Court rulings.

a. What are your views on these gas rules?

b. Do you believe they comport with the Congressional intent in the Natural Gas Act and the Natural Gas Policy Act?

Answer 3:

a. Order 451 was adopted unanimously (before Commissioners Sousa, Stalon, Trabandt, and Naeve) on June 6, 1986. It was clearly a compromise among the members of the

Commission. While it offers the possibility of certain prices for old natural gas being raised, it would allow that to occur only when both parties to the contract for such gas agree, or when a third party agrees to purchase the gas at a higher price and the previous purchaser is unwilling to match that price. Under the rule, any producer wishing to raise the price of old natural gas must also agree to bargain -- using a prescribed "good faith negotiation" procedure -- over price decreases for certain other categories of gas. Since I was not a Member of the Commission at the time the rule was adopted, it does not seem appropriate to "second guess" their unanimous decision to adopt the rule. It is the current law, and I support it.

Order 490 was issued February 8, 1988. However, FERC agreed to rehear it. The draft order on rehearing was approved at the Commission's June 29 meeting and a final order is expected to be issued soon. According to press reports of that meeting, the final order will be issued with various Commissioners supporting part of the rule, concurring with part of the rule, and dissenting on part of the rule. I have not read the final order and thus do not have an opinion on it.

b. To my knowledge, there was no statement of Congressional intent with respect to the issues addressed in either order in the legislative history of either the Natural Gas Act, or the Natural Gas Policy Act of 1978.

Question 4: FERC's take-or-pay policy would spread the burden of take-or-pay liabilities among producers, shareholders of pipelines, and firm supply gas consumers. As I understand it, shareholders of local distribution companies and some large industrial consumers would not be forced to share in this burden.

a. Is that equitable, in your opinion?

b. Do you have any ideas as to how to force all parties to share in take-or-pay liabilities?

Answer 4:

a. In the most basic terms, take-or-pay contracts were entered into by natural gas pipelines purchasing natural gas from natural gas producers. In Order No. 500, issued on August 7, 1987, the Commission adopted a policy on take-or-pay based on the premise that no one segment of the natural gas industry is wholely responsible for the problem and that therefore all segments should shoulder some of the burden of resolving the problem -- including producers, pipelines, local distribution

companies, and end users. The FERC's take-or-pay policy governs the passthrough of costs associated with settling take-or-pay contract disputes and accrued liabilities. Pipelines are legally responsible for paying those costs and the FERC is dealing with what portion of those costs can be passed through to their customers, including distributors. Based on what I know now, I believe the passthrough structure is equitable. FERC does not, however, have direct jurisdiction over local distribution companies. The Commission's take-or-pay policy thus does not attempt to allocate costs to individual customers or classes of customers served by the distributors. This is a matter for State regulation. State public utility commissions, who do have jurisdiction, are beginning to wrestle with what portion of the costs passed on to local distribution companies will, in turn, be passed on to the ultimate consumers of the gas.

b. I do not have any ideas at the present time for a better means of equitably distributing the burden of past take-or-pay liabilities.

○